



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/354,058	07/15/1999	JOHN CRESCENTI	044463.0014	4549

29858 7590 07/12/2004

BROWN, RAYSMAN, MILLSTEIN, FELDER & STEINER LLP
900 THIRD AVENUE
NEW YORK, NY 10022

EXAMINER

COLBERT, ELLA

ART UNIT	PAPER NUMBER
----------	--------------

3624

DATE MAILED: 07/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/354,058

Applicant(s)

CRESCENTI ET AL.

Examiner

Ella Colbert

Art Unit

3624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-13, 15-17 and 19-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-13, 15-17, and 19-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Claims 1-5, 7-13, 15-17, and 19-30 are pending. Claim 7 has been amended in this communication filed 04/01/04 and the amendment has been entered.
2. The Request for an Extension of Time filed 04/01/04 has been granted and entered.
3. The amendment to the Specification has overcome the Specification Objection and the Specification Objection is hereby withdrawn.
4. Claims 4 and 7-12 still remain objected to for the following reason here below.

Claim Objections

5. Claims 4 and 7-12 are objected to because of the following informalities: the first manager component and the second manager component is not referenced in the Specification or drawings as the "first manager component" and "second manager component". It is assumed that 154 is a second manager component and 114 is a first manager component. Applicants' drawing fig. 1, fig. 2, and fig. 3 does not show a label for a "first manager component" and a "second manager component." Appropriate correction is required.
6. As a preliminary matter, Applicants' are respectfully requested to note the change in the art unit where this application is assigned has changed to Art Unit 3624. Please address all future correspondence to the Examiner and Art Unit 3624 in order for all communications relating to this application to reach the Examiner.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-5, 7-13, 15-17, and 19-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US 5,005,122) Griffin et al, hereafter Griffin in view of (US 5,276,867) Kenley et al, hereafter Kenley.

As a preliminary matter, in reference to claim 7, it is suggested to add after "the second manager component is a software module executing on the second network device.

With respect to claims 1 and 20, Griffin teaches, at least two backup cells each col. 1, lines 41-45 comprising: and each of the plurality of backup cells communicatively coupled to at least one other of the plurality of backup cells, and each of the plurality of backup cells adaptable to be controlled by a management component in another of the plurality of backup cells in col. 2, lines 10-30.

Griffin did not teach, a backup device executing a backup of the data stored on one of the plurality of groups of network devices and a management component, communicatively coupled to at least one backup device, controlling the backup of the data to the backup device.

Kenley discloses, a backup device executing a backup of the data stored on one of the plurality of groups of network devices in col. 2, lines 33-43 and col. 3, lines 40-47 and a management component, communicatively coupled to at least one backup

device, controlling the backup of the data to the backup device in col. 5, lines 36-39 and lines 57-63. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a backup device executing a backup of the data stored on one of the plurality of groups of network devices and a management component, communicatively coupled to at least one backup device, controlling the backup of the data to the backup device and to modify in Griffin in view of Griffin's teaching of backup nodes because such a modification would allow Griffin's system to have a backup cell instead of a backup node for backing up data stored on magnetic media for the purpose of minimizing the likelihood of data being lost.

With respect to claim 20, Griffin teaches a management component (col. 1, lines 66-68 and col. 2, lines 1-2 –“Software management consists of a number of functions, including verifying that a user has a correct version, installing new versions as they are obtained, and keeping track of software distribution and use for licensing purposes”);

This independent claim is rejected for the similar rationale as given above for claim 1.

With respect to claims 2 and 21, Griffin teaches, the backup device is controllable from the management component in another of the plurality of backup cells in col. 2, lines 51-61. With respect to claim 21, Griffin teaches a first backup node (cell) (col. 4, lines 10-15) and a plurality of backup nodes (cells) (col. 3, lines 21-35).

With respect to claims 3 and 21, Griffin teaches, the backup device is controllable from the management component in another of the plurality of backup cells via the management component in the same backup cell as the backup device in col. 2, lines 51-61. With respect to claim 21, Griffin teaches, the first backup cell (node) (see claims 2 and 21), *supra*.

Art Unit: 3624

9. Claims 4-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Griffin and Kenley in view of (US 4,995,035) Cole et al, hereafter Cole.

With respect to claims 4 and 22, Griffin teaches, a first backup cell (node) in col. 2, lines 9-30 comprising:

Griffin did not teach, at least one backup device executing a backup of the data stored on the first group of network devices; a first manager component, communicatively coupled to at least one backup device, controlling the backup of the data to at least one backup device; a second backup cell communicatively coupled to the first backup cell, the second backup cell comprising: a second manager component; and the second manager component directly controlling the backup of the data to at least one backup device.

Kenley discloses, at least one backup device executing a backup of the data stored on the first group of network devices in col. 2, lines 33-43 and col. 3, lines 40-47; a first manager component, communicatively coupled to at least one backup device, controlling the backup of the data to at least one backup device in col. 5, lines 36-39 and lines 57-63. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have at least one backup device executing a backup of the data stored on the first group of network devices; a first manager component, communicatively coupled to at least one backup device, controlling the backup of the data to at least one backup device and to modify in Griffin because such a modification would allow Griffin to have a hierarchical storage system configured to have a secondary storage element that has a greater storage capacity and slower access speed than the primary storage element with the backing store having greater storage space and slower access speed than the secondary storage element.

Kenley did not disclose, a second backup cell communicatively coupled to the first backup cell, the second backup cell comprising: a second manager component and the second manager component directly controlling the backup of the data to at least one backup device.

Cole discloses, a second backup cell communicatively coupled to the first backup cell, the second backup cell in col. 4, lines 10-26 comprising: a second manager component in col. 5, lines 32-46; and the second manager component directly controlling the backup of the data to at least one backup device in col. 4, lines 62-68 and col. 5, lines 47-60. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a second backup cell communicatively coupled to the first backup cell, the second backup cell comprising: a second manager component and the second manager component directly controlling the backup of the data to at least one backup device and to modify in Griffin and Kenley because such a modification would allow Griffin and Kenley's system to have a second backup cell connected to the first backup cell for backing up data stored on magnetic media for the purpose of minimizing the likelihood of data being lost.

With respect to claim 5, Griffin and Kenley did not teach, the second manager component directly controls the backup of data to at least one backup device. Cole discloses, the second manager component directly controls the backup of data to at least one backup device in col. 10, lines 4-52. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the second manager component directly control the backup of data to at least one backup device and to modify in Griffin and Kenley because such a modification would allow Griffin and Kenley to have the node accept the secondary focal point as its focal point if it does not have a focal point for control of the primary focal point.

With respect to claim 7, Griffin teaches, the network computing system comprising a first network device, where the first manager component is a software module executing on the first device, and the second manager component is a software module executing on the second network device in col. 4, lines 62-68 and col. 5, lines 1-4.

With respect to claim 8, Griffin teaches, the network computing system further comprising a second network device, where the second manager component executes on the second network device in col. 6, lines 7-61.

With respect to claim 9, Griffin teaches, the second manager component executes on the first network device in col. 7, lines 13-41.

With respect to claim 10, this independent claim is rejected for the similar rationale as given above for claims 4 and 5.

With respect to claim 11, this dependent claim is rejected for the similar rationale given for claim 9.

With respect to claim 12, this dependent claim is rejected for the similar rationale given for claims 9 and 11.

With respect to claim 13, this dependent claim is rejected for the similar rationale as given above for claim 8.

With respect to claim 15, this dependent claim is rejected for the similar rationale as is given for claim 4.

With respect to claim 16, this independent claim is rejected for the similar rationale given above for claims 4 and 10.

With respect to claim 17, this dependent claim is rejected for the similar rationale given for claims 4-16.

With respect to claim 19, this dependent claim is rejected for the similar rationale as given above for claims 4, 5, 10, 11, 16, and 17.

With respect to claim 23, this independent claim is rejected for the similar rationale given above for claims 4, 10, and 16.

With respect to claim 24, Griffin teaches, a means for communicatively coupling each of the plurality of backup cells to at least one other of the plurality of backup cells and each of the plurality of backup cells adaptable to be controlled by a management component in another of the plurality of backup cells (col. 2, lines 10-30, col. 3, lines 36-68, col. 4, lines 1-15 and fig. 1).

With respect to claim 25, this dependent claim is rejected for the similar rationale as for claim 4, *supra*. Griffith teaches a client component (col. 3, lines 21-29).

With respect to claim 26, this dependent claim is rejected for the similar rationale as for claim 24, *supra*.

With respect to claim 26, this dependent claim is rejected for the similar rationale as given for claims 24-26, *supra*.

With respect to claim 27, this independent claim is rejected for the similar rationale as given for claim 20, *supra*.

With respect to claim 28, this dependent claim is rejected for the similar rationale as given for claims 2, 3, and 20, *supra*.

With respect to claim 29, this dependent claim is rejected for the similar rationale as given for claims 5, 12, and 21, *supra*.

With respect to claim 30, this dependent claim is rejected for the similar rationale as given for claims 15 and 22, *supra*.

Response to Arguments

Art Unit: 3624

10. Applicants' arguments filed 04/01/04 have been fully considered but they are not persuasive. The following are the outstanding issues according to the best that the Examiner can establish as addressed here below.

Issue no. 1: Applicants' argue: As a preliminary matter regarding the Examiner's objection to informalities believed to be in claims 4 and 7-12 with respect to a "first manager component" and a "second manager component" not referenced in the Specification or drawings, the Applicants' disagree because support amply exists in both the Specification and the drawings for at least a first manager component and a second manager component has been considered but is not found to be persuasive. Response: The Specification, drawings, and claim language do not state a "first manager component" and a "second manager component". This is left open to interpretation and an assumption that one of the "manager components" is a "first manager component" and that there appears to be another "manager component". However, nothing in the Specification reads that "manager component 114" is a "first manager component" and "manager component 164" is a "second manager component". Likewise, nothing in the drawings labels element "114" as a "first manager component" and element "164" as a "second manager component" and the claim language does not claim a "first manager component" and a "second manager component". This is a failure to particularly point out and distinctly claim the subject matter which Applicants' regard as the invention and could result in a 35 U.S.C. 112, second paragraph rejection.

Art Unit: 3624

Issue no. 2: Applicants' argue: Griffin fails to provide any teaching or suggestion of backup cells whatsoever has been considered but is not considered persuasive.

Response: It is interpreted that Griffin's "backup nodes" are analogous to Applicants' "backup cells" in col. 2, lines 10-30. If this is not the case, Applicants are respectfully requested to claim and to distinguish the difference.

Issue no. 3: Applicants' argue: Griffin does not contain any teaching or suggestion of each of a plurality of management servers being able to control the other has been considered but is not persuasive. Response: In response to Applicants' argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "a plurality of management servers being able to control the other") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The rejected claims do not mention "servers" much less "a plurality of management servers being able to control the other". Applicants' are respectfully request to point out to the Examiner in the claim(s) this feature.

Issue no. 4: Applicants' argue: There is no suggestion or motivation to combine Cole with the backup technologies discussed in Griffin and Kenley has been consider but is not persuasive. Response: In response to Applicants' argument that there is no suggestion to combine the references, the Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so

Art Unit: 3624

found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Griffin is interpreted to teach "backup nodes" which is analogous to Applicants' "backup cells", Kenley is interpreted to teach "a backup device executing a backup of data stored on one of the groups of network devices in col. 2, lines 33-43 and col. 3, lines 40-47, and Cole is interpreted to teach, a first backup cell (non-focal point node), a second backup cell (a focal point node), a second manager component (a focal point being responsible for different management services – control tables (FP types: primary, secondary, and backup). Thus, it is interpreted that Griffin, Kenley, and Cole together teach the claimed invention.

In conclusion, the Examiner carefully drew up a correspondence of each of Applicant's claimed limitations, one or more referenced passages in Griffin, Kenley, and Cole, what is well known in the art and what is obvious to one having ordinary skill in the art at the time the invention was made.

The Examiner is entitled to give the claim limitations their broadest reasonable interpretation in light of the Specification (see below):

2111 Claim Interpretation; Broadest Reasonable Interpretation [R-1]

>CLAIMS MUST BE GIVEN THEIR BROADEST REASONABLE INTERPRETATION

During patent examination, the pending claims must be "given the broadest reasonable interpretation consistent with the specification." Applicant always has the opportunity to amend the claims during prosecution and broad interpretation by the examiner reduces the possibility

Art Unit: 3624

that the claim, once issued, will be interpreted more broadly than is justified. In re Prater, 162 USPO 541,550-51 (CCA 1969)<.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Inquiries

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ella Colbert whose telephone number is 703-308-7064. The examiner can normally be reached on Monday-Wednesday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on 703-308-1038. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3624

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



E. Colbert
July 1, 2004



VINCENT MILLIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600